

U.S. Courts
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Clerk, Idaho

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UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 vs.

13 ZACHARY A. HAUGE,

14 Defendant.
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Case No. CR 1:04-170 EJS ✓

See Also MS-5653 and
CR 03-280-C-EJL

RULE 11 PLEA AGREEMENT

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1 **I. GUILTY PLEA**

2 **A. Summary of Terms.** Pursuant to Rule 11(c)(1) (B) of the Federal Rules of
3 Criminal Procedure, the defendant, the attorney for the defendant, and the Government¹ agree that
4 the defendant will plead guilty to Count One of the Indictment filed on May 13, 2004, as Case No.
5 CR 04-62-B-M3, in the United States District Court for the Middle District of Louisiana. *See* Fed.
6 R. Crim. P. 20, which charges the defendant with Wire Fraud, in violation of Title 18, United
7 States Code, Section 1343.

8 The defendant acknowledges that the plea is voluntary and did not result from
9 force, threats, or promises, other than any promise made in this Plea Agreement. More
10 specifically, the parties agree as follows:

11 **B. Acceptance.** Upon acceptance of the defendant's guilty plea, and the defendant's
12 full compliance with the other terms of this Agreement the Government, under Rule 11(c)(1)(B) of
13 the Federal Rules of Criminal Procedure, agrees to recommend a sentence in the middle of the
14 Guidelines range. Defendant acknowledges, agrees and waives objection to the fact that the Court
15 may consider "relevant conduct" in arriving at an appropriate sentence pursuant to Section 1B1.3 of
16 the Sentencing Guidelines.

17 **II. WAIVER OF CONSTITUTIONAL RIGHTS**

18 Defendant understands that he will be placed under oath at the plea hearing and that the
19 government, in a prosecution for perjury or false statement, has the right to use against the
20 defendant any statement that the defendant gives under oath. Moreover, the defendant understands
21 and waives (gives up) the following rights: 1) the right to plead not guilty to the offense(s) charged
22 against the defendant and to persist in that plea; 2) the right to a trial by jury; and 3) the rights, at
23 trial, to confront and cross-examine adverse witnesses, to be protected from compelled self-
24 incrimination, to testify, to present evidence and to compel the attendance of witnesses. The
25 defendant understands that by pleading guilty he waives (gives up) all of the rights set forth above.

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28 ¹ The word "Government" in this Agreement refers to the United States Attorney for the District of Idaho.

1 The defendant fully understands that by entering a plea of guilty, if that plea is accepted by the
2 District Court, there will be no trial and defendant will have waived (given up) these trial rights.

3 **III. NATURE OF THE CHARGES**

4 **A. Elements of the Crime.** The elements of the crime of Wire Fraud, as charged in
5 Count One, are as follows:

- 6 1. The Defendant made up a scheme or plan for obtaining money or property
7 by making false promises or statements, The Defendant made at least one
8 particular false promise or statement;
- 9 2. The Defendant knew that the promises or statements were false;
- 10 3. The promises or statements were material, that is they would reasonably
11 influence a person to part with money or property;
- 12 4. The Defendant acted with the intent to defraud; and
- 13 5. The Defendant used, or caused to be used, the internet to carry out an
14 essential part of the scheme.

15 **B. Factual Basis.** If this matter were to proceed to trial, the Government and the
16 defendant agree that the following facts would be proven beyond a reasonable doubt, which facts
17 accurately represent the defendant's readily provable offense conduct. This factual summary is not
18 intended to detail all relevant conduct, or cover all specific offense characteristics, which will be
19 determined by the Court after its consideration of the Presentence Report.

20 In February of 2003, the Ryan Matthew Haney ("Haney") (see D. Idaho Case No.
21 CR 03-280-C-EJL), utilizing the e-mail address Hydrocodone@anywhereUSA.com, posted several
22 messages on a bulletin board owned by www.healthboards.com advertising the sale of pain pills.
23 The advertisement advised interested parties to e-mail Haney at
24 Hydrocodone@anywhereUSA.com. The I.P. address for Hydrocodone@anywhereUSA.com was
25 129.101.137.236, the static I.P. number was assigned to Haney by the University of Idaho.

26 On February 19, 2003, Special Agent P. Michael Gordon, acting in an undercover capacity,
27 and using the e-mail address JMichaels1213@hotmail.com, contacted Haney at
28 Hydrocodone@anywhereUSA.com to inquire whether he was still selling pain pills. Later that

1 same day, SA Gordon received an e-mail from Hydrocodone@anywhereUSA.com advising that
2 Haney was still in business and filling pain pill orders. The e-mail also provided an updated price
3 list, shipping fees, Western Union instructions, and the minimum order Haney would process.

4 On February 20, 2003, SA Gordon e-mailed Haney at Hydrocodone@anywhereUSA.com
5 to provide him with an order for the following pain pills: 20 Morphine, 60 Oxycodone, 30
6 Hydrocodone, 40 Skelaxin and 20 Percocet. Later that same day, SA Gordon received an e-mail
7 from Haney at Hydrocodone@anywhereUSA.com advising that the pills could be mailed either
8 Thursday or Friday, depending on when the payment was received, via Western Union.

9 On February 21, 2003, SA Gordon, sent, via Western Union, from a Circle K store located
10 on Old Hammond Highway in Baton Rouge, Louisiana, the payment of \$222.75 for the pain pill
11 order. The payment was addressed to the defendant, Zachary A. Hauge, and sent to Moscow,
12 Idaho 83843. SA Gordon e-mailed Haney at Hydrocodone@anywhereUSA.com advising that the
13 payment for the pain pills was sent via Western Union and providing the Money Transfer Control
14 Number (MTCN) 8680364403.

15 On February 21, 2003, Haney and defendant Hague drove to the Safeway grocery store in
16 Moscow, Idaho, in Haney's car. Defendant Hague went to the Western Union terminal in the
17 Safeway and picked up SA Gordon's payment, MTCN 8680364403. Defendant Hague then left
18 the store with Haney in Haney's vehicle.

19 Later that same day, on February 21, 2003, Haney sent an e-mail to SA Gordon from
20 Hydrocodone@anywhereUSA.com, advising that the package would be sent that day. Haney
21 never mailed a package of pills to SA Gordon.

22 Defendant Hague admits that he knowingly and voluntarily participated with Haney in this
23 scheme to defraud.

24 **IV. SENTENCING FACTORS**

25 **A. Maximum Penalties.** A violation of Wire Fraud, Title 18, United States Code,
26 Section 1343, as charged in Count One, is punishable by a term of imprisonment of up to 20 years,
27 years, a term of supervised release of not more than three (3) years, a maximum fine of \$250,000,
28 and a special assessment of \$100.

1 **B. Waiver of Application of *Blakely v. Washington*.** The defendant, by entering this
2 plea, also waives any right to have facts that the law makes essential to the punishment either
3 (1) charged in the Indictment, (2) proven to a jury, or (3) proven beyond a reasonable doubt. The
4 defendant explicitly consents to be sentenced pursuant to the applicable Sentencing Guidelines and
5 to have the sentence based on facts to be found by the sentencing judge by a preponderance of the
6 evidence. The defendant explicitly acknowledges that his plea to the charged offense(s) authorizes
7 the Court to impose any sentence, up to and including the statutory maximum sentence, that is
8 authorized by the Sentencing Guidelines.

9 **C. Supervised Release.** If defendant is sentenced to one year in prison, or less, the
10 Court may also order that, following release from prison, defendant be placed on supervised
11 release for not more than three (3) years. If defendant is sentenced to imprisonment for more than
12 one year, such a term of supervised release will be imposed. The defendant will be sentenced to a
13 term of supervised release to be served after incarceration.

14 The defendant's term of supervised release will be a specific (i.e., a determinate) term
15 chosen by the Court at sentencing. The combination of prison time and supervised release is
16 permitted, by law, to exceed the maximum term of incarceration allowed under the statute(s) that
17 defendant is pleading guilty to violating. Violation of any condition of supervised release may
18 result in defendant being imprisoned for the entire term of supervised release or being prosecuted
19 for contempt of court under Title 18, United States Code, Section 401(3).

20 **D. Fines and Costs.** Unless the Court determines that the defendant will not
21 reasonably be able to pay a fine, or that paying a fine will unduly burden any of the defendant's
22 dependents, a fine shall be imposed. There is no agreement as to the amount of the fine. The
23 Court may also order the defendant to pay the costs of imprisonment, probation, and supervised
24 release.

25 **E. Special Assessment.** Defendant will pay a special assessment of \$100 per count,
26 in addition to any fine imposed. This assessment will be paid by defendant before sentence is
27 imposed, and defendant will furnish a receipt at sentencing. Payment is to be made to the United
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1 States District Court, Clerk's Office, Federal Building and United States Courthouse, 550 W. Fort
2 Street, Fourth Floor, Boise, ID 83724.

3 **V. UNITED STATES SENTENCING GUIDELINES**

4 **A. Application of Sentencing Guidelines.** Defendant understands that defendant will
5 be sentenced under the Federal Sentencing Guidelines and that: (1) the sentence has not yet been
6 determined by the District Judge; (2) any estimate of the likely sentence received from any source
7 is a prediction and not a promise; and (3) the District Judge has the final authority to decide what
8 the sentence will be.

9 The defendant also understands that the Court will determine the applicable sentencing
10 factors at sentencing and that the Court's determination will affect the sentence range under the
11 Sentencing Guidelines. While the Court may take the defendant's cooperation and the
12 recommendations of the parties into account in determining the sentence to be imposed, the Court
13 has complete discretion to impose a sentence other than the sentence recommended, including the
14 maximum sentence possible for the crimes to which defendant has pled.

15 **B. Sentencing Guidelines Recommendations and Requests.**

16 **1. Acceptance of Responsibility.** Unless the Government learns of new
17 information to the contrary, defendant will be entitled to a reduction of two levels in the combined
18 adjusted offense level, under Section 3E1.1(a) of the Sentencing Guidelines, if the defendant
19 clearly accepts responsibility for the offense. The Government will move for an additional one-
20 level reduction in the combined offense level under Section 3E1.1(b) if the following conditions
21 are met: the defendant qualifies for a decrease under Section 3E1.1(a); the offense is level 16 or
22 greater; and the defendant has assisted authorities in the investigation or prosecution of
23 defendant's own misconduct by timely notifying authorities of defendant's intention to enter a plea
24 of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court
25 to allocate its resources efficiently. If, at any time prior to imposition of sentence, the defendant
26 fails to meet the criteria set out in Section 3E1.1 of the Sentencing Guidelines, or acts in a manner
27 inconsistent with acceptance of responsibility, the Government will not make such a
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1 recommendation and/or motion or, if one has already been made, it will withdraw the
2 recommendation and/or motion.

3 **2. Downward Departure Request by Defendant.** The defendant will not
4 seek a downward departure unless grounds are identified in this Agreement, or if the grounds did
5 not exist prior to the defendant's guilty plea, without first notifying the Government of his reasons
6 and basis therefor at least 21 days prior to sentencing..

7 **VI. WAIVER OF APPEAL AND 28 U.S.C. § 2255 RIGHTS**

8 The defendant is aware that Title 18, United States Code, Section 3742 affords defendant
9 the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the
10 other terms of this Agreement, the defendant knowingly and voluntarily gives up (waives) all
11 appeal rights defendant may have regarding both defendant's conviction and sentence, including
12 any restitution or forfeiture order, or to appeal the manner in which the sentence was imposed,
13 unless the sentence exceeds the maximum permitted by statute, or is the result of an incorrect
14 application of the sentencing guidelines to which the defendant filed a proper and timely
15 objection.

16 The defendant is also aware that under certain circumstances a defendant has the right to
17 collaterally challenge defendant's sentence through a habeas petition such as a motion pursuant to
18 Title 28, United States Code, Section 2255. Acknowledging this, in exchange for the other terms
19 of this Agreement, the defendant knowingly and voluntarily gives up (waives) defendant's right to
20 contest defendant's pleas, conviction, or sentence in any post-conviction proceeding, including any
21 proceeding authorized by Title 28, United States Code, Section 2255, except as to an appeal
22 claiming ineffective assistance of counsel based upon facts discovered after the entry of
23 defendant's guilty pleas.

24 The defendant further understands that nothing in this Plea Agreement shall affect the
25 Government's right and/or duty to appeal as set forth in Title 18, United States Code,
26 Section 3742(b).

VII. PROVIDING INFORMATION FOR THE PRESENTENCE REPORT

The defendant agrees to provide all material financial and other information as may be requested by a representative of the United States Probation Office for use in preparing a Presentence Report. Failure to execute releases and/or provide such material information as may be required is a violation of the terms of this Agreement, and will relieve the Government of its obligations as set forth in this Agreement, and may subject the defendant to an enhancement under Guidelines Section 3C1.1, or provide grounds for an upward departure under Section 5K2.0 of the Sentencing Guidelines, but at the option of the Government, may not constitute grounds for withdrawing the plea of guilty.

VIII. NO RIGHT TO WITHDRAW PLEA

The defendant understands that the Court is not bound to follow any recommendations or requests made by the parties at the time of sentencing. If the Court decides not to follow any of the parties recommendations or requests, the defendant cannot withdraw from this Plea Agreement or the guilty plea.

IX. CONSEQUENCES OF VIOLATING AGREEMENT

A. Government's Options. If defendant fails to keep any promise in this Agreement, including any promise to cooperate, or commits a new crime, the Government is relieved of any obligation not to prosecute defendant on other charges, including any charges dismissed as part of this Plea Agreement. Such charges may be brought without prior notice. In addition, if the Government determines after sentence is imposed under this Agreement that defendant's breach of the Agreement warrants further prosecution, the Government will have the choice between letting the conviction(s) under this Plea Agreement stand or vacating such conviction(s) so that such charge(s) may be re-prosecuted. If the Government makes its determination before sentencing, it may withdraw from the Plea Agreement in its entirety.

B. Defendant's Waiver of Rights. Defendant agrees that if defendant fails to keep any promise made in this Agreement, defendant gives up: (1) the right not to be placed twice in jeopardy for the offense(s) to which defendant entered a plea of guilty or which were dismissed under this Agreement; (2) any right under the Constitution and laws of the United States to be

1 charged or tried in a more speedy manner for any charge that is brought as a result of defendant's
2 failure to keep this Agreement; and (3) the right to be charged within the applicable statute of
3 limitations period for any charge that is brought as a result of defendant's failure to keep this
4 Agreement, and on which the statute of limitations expired after defendant entered into this
5 Agreement.

6 Furthermore, the defendant further understands and agrees that if defendant does not enter
7 a valid and acceptable plea, the Government will move to continue the trial now set. The
8 defendant agrees not to contest such a continuance, and agrees that the resulting delay would be
9 excludable time under Title 18, United States Code, Sections 3161(h)(1)(I), (h)(3)(A), or
10 (h)(8)(A). This continuance will be necessary to allow the Government adequate time to prepare
11 for trial.

12 **X. MISCELLANEOUS**

13 **A. No Other Terms.** This Agreement incorporates the complete understanding
14 between the parties, and no other promises have been made by the Government to the defendant or
15 to the attorney for the defendant. This Agreement does not prevent any governmental agency from
16 pursuing civil or administrative actions against defendant or any property. Unless an exception to
17 this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or
18 obligate governmental entities other than the United States Attorney's Office for the District of
19 Idaho. If requested to do so by the defendant or defendant's counsel, the Government will bring
20 the defendant's cooperation and pleas to the attention of other prosecuting authorities.

21 **B. Plea Agreement Acceptance Deadline.** This plea offer is explicitly conditioned
22 on acceptance of this plea Agreement no later than 5:00 p.m. on August 16, 2004. It is defendant's
23 sole and complete responsibility to notify the U.S. Attorney's Office of the acceptance of this
24 Agreement by the date specified above in order for this offer to be effectively accepted.

XI. UNITED STATES' APPROVAL

I have reviewed this matter and the Plea Agreement. I agree on behalf of the United States that the terms and conditions set forth above are appropriate and are in the best interests of justice.

THOMAS E. MOSS
UNITED STATES ATTORNEY

By: 

RAFAEL M. GONZALEZ, JR.
Assistant United States Attorney

DATE Aug 12, 2004

XIII. ACCEPTANCE BY DEFENDANT AND COUNSEL

I have read and carefully reviewed every part of this Plea Agreement with my attorney. I understand the Agreement and its effect upon the potential sentence. Furthermore, I have discussed all of my rights with my attorney and I understand those rights. No other promises or inducements have been made to me, directly or indirectly, by any agent of the Government, including any Assistant United States Attorney, concerning any plea to be entered in this case. In addition, no person has, directly or indirectly, threatened or coerced me to do, or refrain from doing, anything in connection with any aspect of this case, including entering a plea of guilty. I am satisfied with my attorney's advice and representation in this case.


ZACHARY A. HAUGE
Defendant

DATE 8/17/04

I have read this Plea Agreement and have discussed the contents of the Agreement with my client. The Plea Agreement accurately and completely sets forth the entirety of the agreement. I concur in my client's decision to plead guilty as set forth above.


DENNIS A. BENJAMIN
Attorney for the Defendant

DATE 8/13/04

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